

EXECUTIVE OFFICER SUMMARY REPORT
November 18, 2015

ITEM: 11

SUBJECT: NPDES Permit Amendment: An Order to amend Order No. R9-2013-0001, as Amended by Order No. R9-2015-0001, NPDES No. CAS0109266, *National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region* (Regional MS4 Permit). The amendment includes, but is not limited to, incorporation of the County of Riverside, the Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District as Copermittees under the Regional MS4 Permit. (Tentative Order No. R9-2015-0100) (*Wayne Chiu and Christina Arias*)

PURPOSE: *To consider adoption of Tentative Order No. R9-2015-0100 to amend Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 (Supporting Document No. 1).*

RECOMMENDATION: Adoption of Tentative Order No. R9-2015-0100 with errata is recommended.

KEY ISSUES: 1. The Tentative Order amends the Regional MS4 Permit to include an optional pathway for a Copermittee to be deemed in compliance with receiving water prohibitions and limitations while fully implementing over a period of time a rigorous and transparent alternative compliance path to come into compliance (referred to as the "alternative compliance option"). The proposed alternative compliance option is consistent with State Water Resources Control Board (State Water Board) Order No. WQ 2015-0075, which directs Regional Water Boards to consider a watershed-based planning and implementation approach to compliance with receiving water limitations in Phase I MS4 permits. The environmental community opposed State Water Board Order No. WQ 2015-0075, and oppose the inclusion of the alternative compliance option in the Regional MS4

Permit because they consider it a “safe harbor” from enforcement of receiving water prohibitions and limitations.

2. The Tentative Order amends the Regional MS4 Permit to include additional language that clarifies when a development project has “prior lawful approval.” Development projects that have “prior lawful approval” are only required to implement the development planning requirements of the previous MS4 Permit. All other development projects are subject to the development planning requirements of the Regional MS4 Permit. This additional language was requested for inclusion in the Regional MS4 Permit by the development community and the San Diego County Copermittees.

PRACTICAL VISION:

The Regional MS4 Permit directly implements several chapters of the San Diego Water Board’s Practical Vision. Multiple provisions of the Regional MS4 Permit pertain to the development and implementation of strategies to achieve healthy waters and recovery of stream, wetlands, and riparian ecosystems. These strategies implement an outcome-based approach, with a focus on achieving measureable reductions in MS4 pollutant discharges and improvements in receiving water quality. By extending the coverage of the Regional MS4 Permit to incorporate the Riverside County Copermittees, the Tentative Order will enable these Copermittees to more flexibly deploy resources to achieve goals that will yield the greatest water quality improvements.

DISCUSSION:

The County of Riverside, the Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District (collectively referred to as Riverside County Copermittees) are currently regulated by their Fourth Term MS4 permit, Order No. R9-2010-0016, which expires on November 10, 2015. A map showing the boundaries of these municipalities and the San Diego Water Board’s jurisdiction is provided in **Supporting Document No. 2**.

The Riverside County Copermittees jointly submitted a Report of Waste Discharge (RoWD) in application for MS4 permit reissuance on May 8, 2015. The San Diego Water Board reviewed the Riverside County Copermittees’ RoWD, including its recommendations, and found it to be consistent with the framework, intent, and requirements of the Regional

MS4 Permit. The Tentative Order proposes to amend the Regional MS4 Permit to incorporate the Riverside County Copermittees.

In addition to amending the Regional MS4 Permit to incorporate the Riverside County Copermittees, the Tentative Order also proposes to amend the Regional MS4 Permit to address a variety of other issues including: 1) incorporation of an alternative compliance option to demonstrate compliance with receiving water prohibitions and limitations; 2) clarification of land development requirements describing when a development project has “prior lawful approval” or should be subject to the development planning requirements in the Regional MS4 Permit; 3) Regional Water Board designation to continue consolidated regulation of Phase I MS4 discharges for the Cities of Menifee, Murrieta, and Wildomar pursuant to Water Code section 13228; 4) incorporation of requirements for updating the BMP Design Manual when revisions are made to development planning requirements; 5) clarification of requirements for non-storm water discharges covered by the Statewide NPDES Permit for Drinking Water Systems and the San Diego Water Board’s General Waste Discharge Requirements for Groundwater Extraction Discharges to Surface Waters; and 6) clarification of the Indicator Bacteria, Project I - Beaches and Creeks and Los Penasquitos Lagoon Sediment Total Maximum Daily Load (TMDL) requirements to increase consistency with the Basin Plan TMDL implementation requirements.

Between April and June 2015, the San Diego Water Board conducted three workshops to receive comments and information from Copermittees and other key stakeholders concerning the alternative compliance option and prior lawful approval issues. A San Diego Water Board member was present at the April and May 2015 workshops. Draft permit language that was developed as a result of these workshops was incorporated into the proposed amendments to the Regional MS4 Permit.

The proposed amendments to the Regional MS4 Permit were incorporated into the Tentative Order released for public comment on July 31, 2015, and are highlighted in blue and ~~red-strikeout~~ text in Attachments 1 and 2 to the Tentative Order (**Supporting Document No. 1**). The Tentative Order was released for a 46-day public review and comment period that concluded on September 14, 2015.

Eighteen comment letters were timely received and are presented in **Supporting Document No. 3**. The San Diego Water Board responses to these comments are presented in **Supporting Document No. 4**. In response to comments, additional revisions to Attachments 1 and 2 to the Tentative Order are recommended, and are presented on an Errata Sheet in **Supporting Document No. 5**. A summary of the amendments to the Regional MS4 Permit is provided below:

Alternative Compliance Option

During the February 11, 2015 San Diego Water Board hearing to amend the Regional MS4 Permit to extend coverage to the Orange County Copermittees, the San Diego County, Orange County, and Riverside County Copermittees renewed their request that the Board include the alternative compliance option. The San Diego Water Board declined to include the alternative compliance option but committed to re-examining the option during the proceedings to extend coverage of the Regional MS4 Permit to the Riverside County Copermittees. The proposed alternative compliance option amendment is incorporated as Provision B.3.c in the Regional MS4 Permit, beginning on page 33 in Attachment 1 to the Tentative Order (**Supporting Document No. 1**).

On June 16, 2015, the State Water Board adopted Order WQ 2015-0075 (**Supporting Document No. 6**) which affirmed the concept of an alternative compliance option in the Los Angeles County MS4 Permit and directed that all Regional Water Boards consider inclusion of the option in Phase I MS4 permits going forward. State Water Board Order WQ 2015-0075 includes seven principles that Regional Water Boards are expected to follow if they choose to incorporate an alternative compliance option in a Phase I MS4 permit. The alternative compliance option requirements under Provision B.3.c in Attachment 1 to the Tentative Order are consistent with the seven principles stipulated in State Water Board Order WQ 2015-0075.

Comments submitted from the Copermittees support the proposed alternative compliance option amendment, but generally requested modifications that would result in a less rigorous and transparent process. Comments from the environmental community strongly oppose the inclusion of the proposed alternative compliance option amendment because there is a concern that the Copermittees could have a “safe harbor” from enforcement for violations of receiving water

prohibitions and limitations. The environmental community raised several issues asserting the proposed alternative compliance option is illegal, as well as asserting several inconsistencies with the direction from State Water Board Order WQ 2015-0075. Minor revisions to Provision B.3.c in Attachment 1 to the Tentative Order and the corresponding Fact Sheet discussion in Attachment 2 to the Tentative Order were made in response to the comments, which are shown on the Errata Sheet presented in **Supporting Document No. 5**. The finalized proposed alternative compliance option requirements remain substantively the same as the language developed as a result of the public workshops. Please see responses to comments B3c-1 through B3c-9 and B5-1 in **Supporting Document No. 4**.

Defining Prior Lawful Approval

During the February 11, 2015 Board hearing to amend the Regional MS4 Permit to extend coverage to the Orange County Copermittees, the San Diego Water Board considered including a definition for “prior lawful approval” which was requested by members of the development community and the San Diego County Copermittees. However, the San Diego Water Board decided not to include the definition at that time, but committed to re-examining the issue during the proceedings to extend coverage of the Regional MS4 Permit to the Riverside County Copermittees.

The proposed prior lawful approval amendment language developed as a result of the workshops was incorporated into Provision E.3.e.(1)(a) of the Regional MS4 Permit, which can be found beginning on page 102 in Attachment 1 to the Tentative Order (**Supporting Document No. 1**).

Designation of a Regional Water Board

In 2010, the San Diego Water Board and the Santa Ana Water Board entered into an agreement pursuant to Water Code section 13228 whereby the San Diego Water Board is designated to regulate MS4 discharges within the jurisdictions of the Cities of Murrieta and Wildomar and the Santa Ana Water Board is designated to regulate MS4 discharges within the jurisdiction of the City of Menifee. The political boundaries of these cities are split between the jurisdictions of both the San Diego Water Board and the Santa Ana Water Board. The map in **Supporting Document No. 2** shows the political boundaries of these cities in comparison to the San Diego Water Board and the Santa Ana Water Board regional boundaries.

The San Diego Water Board and the Santa Ana Water Board are continuing the agreement pursuant to Water Code section 13228 to designate a single Regional Water Board to regulate MS4 discharges within the jurisdictions of the Cities of Menifee, Murrieta, and Wildomar. The agreement letters signed by the Executive Officers of the San Diego Water Board and Santa Ana Water Board and sent to the Cities of Menifee, Murrieta, and Wildomar are presented in **Supporting Document No. 7**.

In accordance with the agreement, the Tentative Order amends Table B-1 of the Regional MS4 Permit to require the City of Menifee to participate in the development of the Water Quality Improvement Plan for the Santa Margarita River Watershed Management Area. Table B-1 of the Regional MS4 Permit can be found beginning on page 20 in Attachment 1 to the Tentative Order (**Supporting Document No. 1**).

Other Proposed Amendments

The Tentative Order also includes proposed amendments to make corrections, updates, or clarifications to the language in the Regional MS4 Permit. The San Diego Water Board added requirements for updating the BMP Design Manual when the development planning requirements under Provisions E.3.a-d of the Regional MS4 Permit are revised by the San Diego Water Board after the BMP Design Manual has been submitted by the Copermittees. These requirements were included as a result of corrections that were made to the definition of Priority Development Projects. The corrections to the definition of Priority Development Projects can be found under Provision E.3.b.(1) beginning on page 91, and the proposed amendments for the requirements to update the BMP Design Manual can be found under Provision E.3.d on page 101 and Provision F.2.b beginning on page 126 in Attachment 1 to the Tentative Order (**Supporting Document No. 1**).

The Tentative Order includes proposed amendments to update the requirements for non-storm water discharges to include the recently adopted Statewide NPDES Permit for Drinking Water Systems and the San Diego Water Board's General Waste Discharge Requirements for Groundwater Extraction Discharges to Surface Waters. The proposed amendments can be found under Provisions E.2.a.(1) and E.2.a.(2) on page 82 in Attachment 1 to the Tentative Order.

The Tentative Order also proposes amendments to the requirements in the Indicator Bacteria, Project I – Beaches and Creeks TMDL and Los Peñasquitos Lagoon Sediment TMDL to increase consistency with the TMDL Basin Plan amendments. The proposed amendments to the Indicator Bacteria, Project I – Beaches and Creeks TMDL include adding requirements that allow the Copermittees to develop a Bacteria Load Reduction Plan (BLRP) as well as a Comprehensive Load Reduction Plan (CLRP). The proposed amendments can be found in Tables 6.1 and 6.4 on page E-31 and E-38, respectively, in Attachment 1 of the Tentative Order. The proposed amendments to the Los Peñasquitos Lagoon Sediment TMDL include additional clarifying language to the Final TMDL Compliance Determination requirements, which can be found on page E-54.

In addition, as a result of comments received, the San Diego Water Board agreed to amendments that 1) clarify the effective date of the BMP Design Manual (see responses to comments E3d-2 and F2b-1), 2) clarify the definitions for Construction Activities and Redevelopment in Attachment C to the Regional MS4 Permit (see response to comments AttC-1 and AttC-2), and 3) clarify in the Fact Sheet that complying with the Illicit Discharge Detection and Elimination requirements under Provision E.2 is deemed to be compliance with the effective prohibition of non-storm water discharges to the Copermittee's MS4 under Provision A.1.b (see response to comment E2-1). These proposed amendments are also shown on the Errata Sheet in **Supporting Document No. 5**.

LEGAL CONCERNS:

Responses to legal comments received during the public comment period are included in the Response to Comments Report under comments Gnl-10, B3c-3, B3c-5, and B3c-7 through B3c-9 in **Supporting Document No. 4**.

SUPPORTING DOCUMENTS:

1. Tentative Order No. R9-2015-0100 with Attachments:
 - 1) Revised Order No. R9-2013-0001
 - 2) Revised Fact Sheet to Order No. R9-2013-0001
2. Map of Santa Margarita Hydrologic Unit Showing Riverside County Copermittees' Boundaries

3. Comment Letters Received on Tentative Order No. R9-2015-0100 and Attachments
4. San Diego Water Board Response to Comments Report
5. Errata Sheet listing additional changes to the Tentative Order and Attachments
6. State Water Board Order WQ 2015-0075
7. San Diego Water Board and Santa Ana Water Board Agreement Letters for Single Regional Water Board Designation to Regulate MS4 Discharges from the Cities of Menifee, Murrieta, and Wildomar
8. Notice of Public Hearing

PUBLIC NOTICE:

Notice of this item was provided to interested persons via the San Diego Water Board e-mail subscription list on July 31, 2015 (**Supporting Document No. 8**). Notice was also published in the Riverside Press Enterprise, San Diego Union, and Orange County Register newspapers. It was also provided in the Meeting Notice and Agenda for the November 18, 2015 Board meeting, which is posted on the San Diego Water Board's website.